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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| In re L.A. et al., Persons Coming Under the Juvenile Court Law. | |
| SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>R.A.,<br><br>Defendant and Appellant. | D049907<br><br>(Super. Ct. No. SJ11496 A-C) |

APPEAL from orders of the Superior Court of San Diego County, Peter E. Riddle, Judge. (Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.) Affirmed.

R.A., the mother of L.A., Elsa A. and Raymundo A., appeals the orders terminating her reunification services at the 12-month review hearing. R.A. contends that the juvenile court erred because she was not provided reasonable services. R.A. also

contends that the court abused its discretion when it terminated her services, but continued services for the children's father.

FACTS

From February 6, 2004 to February 25, 2005, R.A. was participating in a voluntary services contract with the San Diego County Health and Human Services Agency (Agency). R.A. had completed a parenting class, individual therapy and home support services, but had not completed her substance abuse program. In May 2005, R.A. relapsed, and Agency offered her another voluntary plan. R.A. signed this plan on June 16.

On July 20, 2005, police responded to a report of domestic violence between R.A. and a female roommate. R.A. admitted to the social worker that she had been using methamphetamine during most of the month of June. The next day, the social worker took the children into protective custody, citing R.A.'s drug use, domestic violence and the effect of her unstable home life on the children.

On July 26, 2005, Agency filed dependency petitions on behalf of L.A., then eight years old, Elsa, then six years old, and Raymundo, then three years old, alleging that they were at substantial risk of harm because of their mother's substance abuse, and their exposure to domestic violence in the home. (Welf. & Inst. Code,[1] § 300, subd. (b).) The two girls were detained in the same foster home, and Raymundo was detained in a different foster home. Upon R.A.'s request, the court ordered her to participate in the

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1 All statutory references are to the Welfare and Institutions Code.

Substance Abuse Recovery Management System program (SARMS). The court also authorized a psychological evaluation of R.A.

R.A. identified Hector A., with whom she had a relationship from 1996 to 2002, as the children's father. R.A. did not know Hector's whereabouts.[2]

On July 25, 2005, R.A. enrolled in the MITE Options Substance Abuse Treatment Program and was attending five days a week. R.A. also was attending Narcotics Anonymous meetings three times a week.

In September 2005, Agency located Hector in Las Vegas, Nevada, and informed him of the dependency proceedings. Hector said that R.A. had largely prevented him from having contact with the children over the past three years, but that she had allowed L.A. and Raymundo to visit him in Las Vegas for three weeks the previous March. Elsa did not accompany her siblings to Las Vegas because she did not want to visit Hector.

Also in September 2005, R.A. switched from the Options Substance Abuse Treatment Program to the UPAC Drug and Alcohol Treatment Program, because she lived closer to the UPAC facility.

On October 28, 2005, the juvenile court sustained the children's dependency petitions. The court granted Hector presumed father status, and ordered Agency to request an Interstate Compact for the Placement of Children (ICPC) evaluation from the Nevada social services agency. The court authorized R.A. to have unsupervised visits for up to three hours a week.

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2 Hector is not a party to this appeal.

On November 3, 2005, the court declared L.A., Elsa and Raymundo dependent children, removed them from the custody of R.A. and ordered the parents to comply with their case plans. R.A.'s case plan requirements were to participate in counseling, undergo a psychological evaluation, complete a parenting course, participate in a 12-step program, undergo random drug testing and participate in SARMS.

In late November 2005, psychologist Thomas Barnes prepared an evaluation of R.A., which concluded with the following recommendations:

> "1. It is imperative that [R.A.] complete a chemical dependency intervention program in light of the history that she provides and current test findings suggestive of a propensity for addiction. She should ultimately formulate and implement a drug relapse prevention plan that includes meetings and the mandated use of a sponsor.
>
> "2. Psychotherapy is critical for this subject in light of the myriad conflicts that have been identified. Treatment should provide her with greater capacity for expressing emotion in a controlled and modulated manner. Her history of abuse as a child and emotional neglect by her family should be addressed and resolved in light of the conflicts that they seem to cause at the present time.
>
> "3. An anger management class might be a useful adjunct to the individual therapy that has been proposed."

In January 2006, R.A. married Carlos O.

For the six-month review hearing, Agency reported that both parents were complying with their case plans. Thomas Bordson, R.A.'s therapist, reported: "Client is progressing, . . . client has been sober, and has gained much insight into her substance abuse, relapse prevention. She seems committed to maintaining sobriety, but there are

still concerns regarding her impulsivity, and ongoing depressive symptoms." R.A. began conjoint therapy with her daughters on February 10, 2006.

In February 2006, the UPAC Drug and Alcohol Treatment Program discharged R.A. from the program because she had six unexcused absences and her overall participation was unsatisfactory. Moreover, R.A. did not tell the social worker that UPAC had discharged her. Instead, R.A. initially told the social worker that she was returning to the Options program because her recent move had made that program more convenient for her. R.A. enrolled in the MITE Options recovery program on February 13. R.A.'s drug test results continued to be negative and she continued to submit verification of her attendance at required 12-step meetings. R.A. completed nine parenting classes.

R.A.'s unsupervised visitation had been increased to seven hours per week. Initially, the children were bored during the visits, because R.A. slept. However, this ended after it was pointed out to R.A. that it was inappropriate for her to sleep during visits. R.A. attributed her sleeping to depression and began taking her anti-depressants on a daily basis. On April 15, 2006, R.A. began overnight visits with the children.

Hector completed two parenting courses and started individual therapy. Hector telephoned the children weekly. In February 2006, Nevada ICPC officials denied Hector's ICPC because he failed to return his informational packet in a timely fashion.

At the six-month review hearing on May 4, 2006, the court found that both parents had made substantive progress with their case plans and substantial progress in mitigating the causes that led to the removal of the children. The court ordered six more months of

services for each of the parents. The court also ordered Agency to resubmit the Nevada ICPC request for Hector.

On May 9, 2006, R.A. was found guilty of contempt of court for poor compliance in SARMS, but was not sanctioned. R.A. tested positive for codeine. She admitted that she was taking Vicodin for a toothache. R.A. continued to use Vicodin even though her substance abuse counselor told her not to. R.A. also submitted a number of diluted drug tests. As a result of the Vicodin usage and "several diluted tests," Agency changed R.A.'s visits to supervised status. The social worker noted that R.A. no longer visited the children on a consistent basis.

In late June 2006, R.A. was terminated from the Options drug program for excessive absences. R.A. begrudgingly admitted that she had become addicted to Vicodin. In July, R.A. enrolled in an in-patient program, but quit after only a few days.

Therapist Bordson terminated R.A.'s counseling in July 2006, because of her poor attendance.

On August 9, 2006, the juvenile court found R.A. in contempt for noncompliance with SARMS and sentenced her to three days in jail. The court also ordered her to participate in dependency drug court.

On August 31, 2006, R.A. told the dependency drug court judge that she had used alcohol. R.A. enrolled in another drug treatment program, but was discharged within two weeks because she tested positive for methamphetamine. On September 14, the drug court judge found R.A. guilty of contempt and sentenced her to five days in jail, but stayed the sentence.

R.A.'s SARMS worker ordered her to enter the CRASH inpatient drug program, but CRASH discharged R.A. after a few days because she brought a cellular telephone into the facility, in violation of the program rules. When the SARMS worker observed that it was difficult for R.A. to walk, R.A. disclosed that she had been injured during a domestic incident with her husband, Carlos, in late August or early September. R.A. said that her husband had left her because she continued to use illegal drugs, and that his leaving upset her very much.

On October 5, 2006, the drug court judge found R.A. in contempt and sentenced her to five days in jail. While R.A. was jail, the Immigration and Naturalization Service placed a hold on her, and she was subsequently deported to Mexico.

In contrast to R.A.'s poor performance after the six-month date, Hector continued to participate in his services and maintain contact with the children. After the Nevada officials denied the second ICPC request,[3] Hector moved to California to be closer to the children. He had his home assessed by California social workers.

At the contested 12-month review hearing on November 27, 2006, social worker Elsa Esquivel testified that she had not provided R.A. with referrals for anger management or domestic violence because R.A. reported that she was already overwhelmed with services. Esquivel believed that it was important for R.A. to concentrate on her drug abuse treatment before moving on to deal with her other issues. The social worker recommended terminating services for R.A., noting that R.A. could not

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3 The ICPC was denied because Hector was an undocumented immigrant.

fulfill her case plan objectives by the 18-month review date, which was only two months away.

R.A. testified that after she was deported, she contacted the social worker and began participating in services. R.A. said that she went to a recovery home every day and took part in 12-step meetings. R.A. believed that she could benefit from involvement in residential drug treatment, anger management, and domestic violence education. R.A. denied that she and Carlos had engaged in domestic violence.

The court terminated R.A.'s reunification services, finding that she had not made substantive progress with the elements of her case plan and had not demonstrated that she would be able to complete the objectives of her treatment plan and provide for the children's needs. The court also found that Agency had provided reasonable services to R.A. The court found that Hector had made substantive progress and that there was a substantial probability that the children would be placed in his custody by the 18-month date. The court continued services for Hector.

## DISCUSSION

### *I. Termination of One Parent's Services Is Not Abuse of Discretion*

R.A. contends that the juvenile court abused its discretion when it terminated her reunification services while continuing Hector's services. The contention is without merit.

Under our statutory scheme for dependent children, a juvenile court is not mandated to provide 18 months of reunification services. The court may, at its discretion, extend services beyond 12 months *only* if it finds that there is a substantial

probability that the child will be returned to parental custody and safely maintained in the home within the extended period of time, or if it finds that reasonable services have not been provided to the parent. (§§ 361.5, subd. (a), 366.21, subd. (g)(1).) In order for the court to find a substantial probability of return, the court must find that the parent has consistently and regularly visited the child (§ 366.21, subd. (g)(1)(A)); the parent has made significant progress in resolving the problems that led to the child's removal from the home (§ 366.21, subd. (g)(1)(B)); *and* "[t]he parent . . . has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs" (§ 366.21, subd. (g)(1)(C)). All three prerequisites must be shown to support a finding that there is a substantial probability of return.

Putting aside the question of reasonable services, which we address in part II, *post*, there was substantial evidence to support the juvenile court's finding that there was no substantial probability the children would be returned to R.A.'s custody and safely maintained in her home by the 18-month date. (*Dawnel D. v. Superior Court* (1999) 74 Cal.App.4th 393, 398, disagreed with on another ground by this court in *Jessica A. v. Superior Court* (2004) 124 Cal.App.4th 636, 642-643.) The court found that R.A. had not satisfied section 366.21, subdivision (g)(1)(B) and (C.) Despite having made good progress during the first six months of the dependency proceedings, R.A. regressed during the next six months to such an extent that her substance abuse was arguably worse than it was before these proceedings began. She failed at numerous drug treatment programs – both outpatient and inpatient programs – repeatedly, had dirty and/or diluted

tests and started abusing Vicodin, a prescribed medication. R.A.'s therapist terminated counseling because of her poor attendance, and R.A. never completed a parenting course. Given this track record, it was reasonable for the court to conclude that R.A. had not made significant progress (§ 366.21, subd. (g)(1)(B)) and that she lacked the ability to meet the objectives of her case plan and to provide for the children's safety and physical and emotional well-being (§ 366.21, subd. (g)(1)(C)).

At the same time, the court's finding that there was a substantial probability that the children would be returned to Hector's custody by the 18-month date and safely maintained in his home was supported by substantial evidence. Hector maintained contact with the children. He moved to California to be closer to the children and had California officials evaluate his home. Hector also showed significant progress by continuing to participate in, and do well with, his case plan services. By the time of the contested 12-month review hearing, Elsa, who had not wanted to visit Hector in March 2005, preferred to live with him rather than with R.A. Agency planned to initiate overnight visits for the children with Hector as soon as the pending evaluation of his California home was completed.

R.A. contends that the court abused its discretion in terminating her services while extending Hector's services. The controlling case is *In re Alanna A.* (2005) 135 Cal.App.4th 555, in which this court held that the juvenile court had the discretion to terminate one parent's services while at the same time extending the other parent's services. (*Id*. at pp. 558, 565.) The *Alanna A*. court further noted:

> "[W]hen reunification efforts continue for one parent after the 12-month review hearing, a court has the discretion to offer services to the nonreunifying parent, and in many cases may choose to do so. However, there is a secondary rationale for limiting services to the nonreunifying parent. The Legislature has recognized that in some circumstances, it may be fruitless to provide reunifications services. [Citations.] In such a case, the general rule favoring reunification services is replaced by a legislative assumption that offering services would be an unwise use of governmental services." (*Id*. at p. 566.)

We find no abuse of discretion.

R.A. had been offered reunification services for 12 months. Before that, she had been offered services under a voluntary plan for 12 months. Despite these services, R.A.'s substance abuse – her most serious problem – persisted and, if anything, became worse. R.A.'s visitation became less consistent, and she was dropped from therapy because of poor attendance. "Under these circumstances, the termination of reunification services to one parent is rationally related to the legitimate government interest in focusing government resources on the parent who has consistently visited the child, made significant progress in resolving problems, and demonstrated the capacity and ability both to complete the treatment plan and provide for the child's needs. (§ 366.21, subd. (g)(1)(A), (B), (C).)" (*In re Alanna A.*, *supra*, 135 Cal.App.4th at p. 566.)

II. *Substantial Evidence Supports a Finding that Agency Offered Reasonable Services*

R.A. contends that the juvenile court abused its discretion by terminating her reunification services because Agency did not offer her reasonable services. Specifically, R.A. claims that her case plan should have included a domestic violence treatment program and an anger management course. The contention is without merit.

"[T]he focus of reunification services is to remedy those problems which led to the removal of the children." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1464.) A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. (*Armando L. v. Superior Court* (1995) 36 Cal.App.4th 549, 554-555.) However, we recognize that in most cases, more services might have been provided and that the services provided are often imperfect. (*Elijah R. v. Superior Court* ( 1998) 66 Cal.App.4th 965, 969.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R., supra,* at p. 547.)

The question for this court is whether substantial evidence supports the trial court's findings that reasonable services were provided, reviewing the evidence in a light most favorable to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Misako R., supra,* 2 Cal.App.4th at p. 545.)

Our review of the record shows that there is substantial evidence to support the court's finding that R.A. was offered reasonable services. L.A., Elsa and Raymundo were taken into protective custody because of R.A.'s substance abuse, and their exposure to physical altercations between R.A. and her female roommate. R.A. was not successful with her voluntary contract for services because she did not follow through with

substance abuse treatment. R.A.'s case plan requirements were individual counseling, a psychological evaluation, parenting education, a 12-step program, random drug testing and participation in SARMS. Although the plan did not contain a domestic violence component, this issue was to be addressed in R.A.'s individual counseling sessions. This emphasis on substance abuse treatment was appropriate. (*In re Michael S.*, *supra*, 188 Cal.App.3d at p. 1464.)

According to R.A.'s psychological evaluation, it was "imperative that she complete a chemical dependency intervention program," and it was "critical" that she engage in psychotherapy. The psychological evaluation also noted: "An anger management class might be a useful adjunct to the individual therapy that has been proposed." Thus, the psychological evaluator recognized substance abuse as R.A.'s primary problem.

Social worker Esquivel testified that R.A. told her she was overwhelmed with meeting the case plan requirements dealing with substance abuse. As a result, Esquivel decided to have R.A. concentrate first on getting treatment for her substance abuse – which was her most serious problem – and to deal with the issues of domestic violence and anger management later. At the same time, R.A.'s therapist was to address the domestic violence and anger management issues during therapy. Under the circumstances of this case, the social worker's decision was rational and reasonable.

The problem was not with the services offered to R.A., but rather, with her unwillingness and/or inability to follow through with the services and acquire the ability to safely parent L.A., Elsa and Raymundo. Significantly, R.A. failed numerous drug treatment programs, was discharged from therapy, and became inconsistent in visiting the

children. Also at times, R.A. did not take the medications prescribed for her depression. "It is . . . well established that 'reunification services are voluntary, and cannot be forced on a unwilling or indifferent parent. [Citation.]' [Citations.]" (*In re Christina L.* (1992) 3 Cal.App.4th 404, 414.) It "is not a requirement that a social worker take the parent by the hand and escort him or her" to the service providers. (*In re Michael S.*, *supra*, 188 Cal.App.3d at p. 1463, fn. 5.)

As this court has observed, "[t]he standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547.) Although the services provided to R.A. may not have been perfect, we conclude that they were reasonable under the circumstances.

DISPOSITION

The orders are affirmed.

AARON, J.

WE CONCUR:

O'ROURKE, Acting P. J.

IRION, J.